12

Supreme Court, U.S.
FILED
JUL 15 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, ET AL.

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

ROBERT A. KAHN,
135 S. La Salle St.,
Chicago 3, Illinois,
Counsel for Petitioners.

REX K. NELSON,
416 5th St. N. W.,
Washington, D. C.
Of Counsel.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Statement of matter involved	1
Jurisdiction	5
Questions presented	5
Reasons for granting the writ	5
Summary of reasons for granting writ	24
Conclusion	27
Appendix	28

Citations

Statutes:

Defense Production Act of 1950, as amended by Public Law 429, 82nd Congress, Section 408 (a)(c)	5
Housing and Rent Act of 1947, Sec. 206 (h)	7

Miscellaneous:

Rent procedural Reg. 2, Sec. 26	5
Rent procedural Reg. 3, Sec. 26 (b)	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 181

JENNIE E. DARGEL, ET AL.

Petitioners,

vs.

WILLIAM G. BARR, DIRECTOR OF RENT STABILIZATION, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners respectfully pray that a writ of certiorari may issue out of this court directed to the United States Emergency Court of Appeals to review the final judgment of that Court in an appeal docketed in that Court as No. 611, which affirmed a judgment in favor of the Respondent entered by the Office of Rent Stablization of Washington, D. C.

Summary Statement of Matter Involved

On June 28, 1952, (TR 66) landlord Elfenbein purchased the premises 4414-16 N. Malden Street, Chicago 40, Ill. from Anten L. Hybl and made the first payment on the mortgage

on July 29, 1950, (TR 66). The building contained six large apartments. One of them became occupied by Elfenbein; the other five were occupied by long time tenants, from 10 up to 25 years.

One of the apartments was occupied by co-tenants Corbin and Jackson and Jackson's sister, Carrie, who was blind, had pernicious anemia and was 88 years old.

At the time of purchase two contests were going on between the Jackson household and Hybl. As Jackson was past 80 and had heart trouble, the contests were conducted mainly by Corbin (Corbin and Jackson were cousins and long time partners. Corbin had occupied an adjoining apartment with his mother. Some time after his mother's death he had moved in with Jackson as co-tenant.)

Both contests overlapped the date of purchase for a long time in both directions. One was a forcible detainer action in the Municipal Court. The other was an OHE action for reduction of rent.

A. Lawrence Lenit, a lawyer and cousin of Elfenbein was agent in the purchase. Landlord Hybl acted in both contests. On Aug. 24, 1950, Corbin won the ORS contest. On Oct. 19, 1950 he won the Municipal Court Contest and paid seven months back rent.

On September 1, 1950, the date when the reductions in rent from the ORS orders of Aug. 24, 1950, became effective, Elfenbein commenced personally to collect rents. Except in the case of one tenant, the Clocks, Elfenbein refused to recognize the reductions, and collected overceiling rents for 19 months from the other four tenants. At the end of the 19 months he notified them to pay the legal rents beginning with April, 1953. On Feb. 6, 1952, he had started action in the ORS in Chicago, for certificates of eviction against all the tenants in order to convert to smaller units. In the following March the tenants had notified the ORS

of the overcharges. Hence, the reduction in rents. Elfenbein swore under oath at this time that he then learned for the first time of the ORS orders of Aug. 24, 1950, reducing rents, although all the tenants swore (Tr. 82) that they had notified him of the matter 19 months before, at the time the orders were issued.

On May 13, 1952 certificates of eviction were issued to Elfenbein to convert to smaller units immediately: to make 10 units out of five of the six apartments.

On June 2, 1952, the complainants appealed to the ORS in Washington against the validity of the certificates on the ground of bad faith with regard to the tenants. Landlord replied that the only issue of good faith involved was did he really intend to convert.

On July 31, the ORS in Washington denied the appeal, but the certificates were suspended for ten days thereafter by rent procedural regulation 2, Section 26.

On August 2, 1952, tenant Earle R. Jackson died of heart trouble in three hours through overexertion in this matter.

On August 5, in spite of the ten days stay, landlord started forcible detainer actions against all the tenants.

On August 11 (the 10th was Sunday) the tenants filed further appeal on the good faith issue with the U. S. District of Columbia Court.

On August 30, they filed again on the same issue in the EmCA.

On September 5, 1952, the Municipal Judge in Chicago held for the landlord, and gave the tenants ten days to vacate, or 5 days to post appeal bond. This was done in spite of the filing in the Em[illegible] of Aug. 30 which automatically suspended the certificate (Rent Procedural Regulation 3, Section 26(b))

Tenants Wm. I. Clock, Jennie E. Dargel, and Arthur J. Koch moved out on Sept. 17, Oct. 2, and Oct. 17, 1952 respec-

tively. On Dec. 17, it was ordered that these three tenants be retained as complainants.

On Dec. 17, also, the EmCA printed an Opinion stating that these tenants were properly filed in their Court. On December 27, 1952, it was also ordered that Carrie Jackson and David Corbin be joined as complainants. (Earle R. Jackson and David Corbin were cousins and long time partners. Corbin had occupied an adjoining apartment until after the death of his mother, when he moved in with Jackson as co-tenant (Tr 68)). On January 8, 1953, Carrie Jackson was made the personal representative of Earle R. Jackson, Deceased. (R. 124)

On Jan. 19, 1953, after an oral hearing at 1212 Lake Shore Drive in Chicago on the subject of continued attempts at eviction in the local courts, a restraining order was issued against Elfenbein, to cease such attempts.

On March 23, 1953, there was another oral hearing at the same place. Here the ORS attorney stated orally, in substance, that the ORS and complainants agreed upon the law, but that the ORS decision had rested on the matter of credibility, and on that ground they had decided for the landlord, that they had had to speculate from the nature of the case, but they had done the best they could under the circumstances.

On May 12, 1953, (R. 127) the EmCA printed an Opinion sustaining the landlord and expounding the applicable doctrine of good faith. On this doctrine the complainants had thought that they were in agreement with the ORS (Washington) while in reality they were far apart. Permission was granted the complainants to file for a rehearing on June 5, 1953. The petition for the rehearing was denied on June 15, 1953.

The basic contention of the Petitioners is that Respondent Elfenbein has used the threat to evict to convert to smaller units, to revoke an OHE order reducing rents, to avoid the

obligations of decorating and repair, to infringe on other rights and to prevent complaints to the OHE.

To substantiate this statement and to show that the doctrine of good faith will bar conversion under these circumstances, is the main object of this petition. Incident to this purpose and in the public interest is sought a ruling on the applicable doctrine of good faith. A ruling is also asked on the question whether perjury, which is free from prosecution by the aggrieved one, when practised before the ORS, is still so protected when practised before the Supreme Court. A third ruling is asked: is confidential evidence, which is allowed the ORS, still allowed to be kept confidential before the Supreme Court.

Jurisdiction

The judgment of the U. S. Emergency Court of Appeals was entered on May 12, 1953 and Petition for rehearing was denied on June 15, 1953. The jurisdiction of this Court is invoked under the Defense Production Act Amendments of 1952, Public Law 429, Section 408 (c).

Questions Presented

1. The applicable law.

2. Did landlord use the privilege to convert to revoke an OHE order reducing rent, to avoid the obligations of decorating and repair, to infringe on other rights, and to prevent complaint to the OHE? Did he do this things knowingly and wilfully?

3. Has the ORS been partisan?

4. Has landlord violated Reg. 3, Section 26(b) and Regulation 2, Section 26? Is such violation part of bad faith?

Reasons for Granting of the Writ

1. The public interest. The abuse involved has been nation wide. It will continue to be widespread in defense

areas. When that war comes that history says always follows an armament race, said abuse may well become nationwide again. Widespread as the abuse here typified has been, it is the first of its kind to ever reach the Supreme Court. The setting for and cause of the abuse rests on the following circumstances:

When Congress granted the privilege to convert to smaller units and go free of controls, leaving other residential property still controlled and unable to compete, a legal privilege was created what could be, and has been, abused on a nationwide scale.

It put in the hands of the landlord that most potent of all rent control powers, the power to evict, and also, what is the most evil aspect of that power, the power to levy blackmail by the threat to evict.

Out of this enforcible threat to evict has grown the worst abuse and worst racket of rent control.

Here it has been used to revoke an order of the OHE reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaint to the ORS, and then having fleeced the tenants of over $1500 (their claim, Landlord admits over $800.00) proceeded to seek certificates of eviction against them all to convert to smaller units. A clear interpretation of the law in this matter would be much in the public interest.

2. Justice for the Petitioners.

3. A precedent that will protect others from the same injuries.

The landlord has used the threat to convert (Tr. 89) to revoke an OHE order reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaint to the OHE.

Mr. Morris A. Lieberman, General Counsel for Region 6, on May 15, 1952, told Corbin, that under circumstances such

as are exemplified above, he would hold for the tenants. He added that the applicable law was Section 206(h) of the Housing and Rent Act of 1947. He intimated that there was no need to prove motivation, or even discuss it in a condition of this kind. (This was just two days after the inexperienced Mr. Turek had decided against the tenants. Mr. Turek had replaced the long experienced and capable Mr. Moses, shortly before the tenants' hearing of May 7, 1952. Not long after the hearing Mr. Turek left the service. Mr. Moses had been promoted to the Regional Office.)

Mr. Lieberman has had much experience in such cases. For a long time appeals from the Chicago Area went first to him and his assistants. This was discontinued for the sake of economy.

2. Certainly Congress never intended that the privilege to convert should be used as a tool for blackmail. It is a sound legal maxim that the misuse of a legal privilege shall bar the violator from its lawful use. The Court will recall the three unlawful evictions obtained, and more attempted, by the misuse of this privilege.

3. There is another criterion that upholds the tenants, that is the main use of the Cook County Rental Advisory Board. Their decisions have no legal force, but the ORS has never reversed them. That criterion is the public interest.

A conversion that evicted long time residents, as here, the old, the sick, the blind; that housed no more people, as here; that deteriorated adjoining property, as here; such a conversion is not in the public interest, surely.

According to Morris A. Lieberman the Applicable Law in This Case (206 (h) of the Housing and Rent Act of 1947)

Proof that the interpretation of this law, as practised in Region 6 and elsewhere, in such cases as this, is the only equitable interpretation.

Deeds, actions, realities are what a wrong doer should be judged by, and not by how much of a protest the aggrieved one puts up. Certainly the right to redress should rest upon the wrong, and not upon the victim's reaction to the wrong. A cat picked up by an eagle would put up an awful fight, while a rabbit would submit meekly to destruction, yet the Judge in the Great Beyond would not regard the cat's case as any better than the rabbit's.

When Congress wrote the words "go or propose to go" into Section 206(h) of the Housing and Rent Act of 1947, they not only meant that the legal privilege to convert should not be used for retaliation, but that also, that it should not be used as a means for overcharging, underservicing, dominating, preventing complaint, or in any other unlawful way. In other words, as stated above, Congress never intended that the privilege to convert should be used as a tool for blackmail. And the sound legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use, not only applies here but Congress intended that it should.

To hold otherwise would defeat the purpose of the law, namely: to protect the weak against the strong.

Let us deny this and follow where the denial leads. The Great Judge, aforementioned, in the cat and rabbit cases, would say to the rabbit: you put up no fight; the eagle wasn't mad at you; you were just another meal; so far as you are concerned, to quote Judge Maris; the eagle was flying high; you have no case: on the other hand, the cat made the eagle good and mad; I hold for the cat.

Thus our denial makes the judgment rest, not on the wrongs suffered, which were equal for both cat and rabbit, but on the state of mind of the eagle, and instead of being protected the more, the weak is penalized for his weakness.

Now let us suppose in the present case that the landlord

has used the privilege to convert as a tool for blackmail; that the tenants act like the rabbit; and that he fleeces them by overcharges and under services of more than enough to obtain evictions to start him on a career of conversion, which he really means to carry on with. He has no more feeling about the tenants than the eagle had about the rabbit. They were merely stepping stones. He is not using conversion as a means of getting even. He has nothing to get even for. And, therefore, as his victims have not aroused his anger, the issue is decided against them.

Next suppose that the tenants act in the above case, not like the rabbit but like the cat, and though the landlord still manages to fleece them, they make him so mad in the process, that the conversion that he really intends, becomes secondary to his desire to get even by evicting. The dominating motive being revenge, eviction is denied.

In both the cases discussed just above, the rabbit case and the cat case, so to speak, the same wrongs have been suffered by the tenants, the privilege to convert has been violated in the same way. Yet in the cat case, eviction is denied: in the rabbit case, it is granted. Judgment was meted out, not on the basis of the wrongs done, but on the degree of anger produced in the wrongdoer by the tenants reaction to the wrong.

In both cases the landlord has been guilty of the same identical wrongs, and yet it is not the wrong that decides the issue, but the state of mind of the wrongdoer, who, if we accepted this narrow interpretation of 206(h), could violate the legal privilege to convert with impunity, so far as affecting his right to convert was concerned, so long as he was cold blooded enough to hold his temper against tenant reactions.

In such cases as this, 206(h) of the Housing and Rent Act of 1947, properly interpreted, means that:

The use of the privilege to evict to convert shall not be used either as deed to punish; or as threat to prevent complaint, to overcharge, to underservice, or to levy blackmail of any kind. All of this is implicit in 206(h). It has been so used in Chicago and Region 6 for years. Everywhere else, also, we believe.

Common sense would read this meaning into the act. Even if it did not, the sound legal maxim that the abuse of a legal privilege shall bar the violator from its lawful use, would put it there. Congress never intended that the privilege to convert should start landlords off on a career of blackmail.

By use of landlord's own words of admission and facts beyond question by either side, the following pages prove abuse of the privilege to convert by the landlord, and partisanship by the ORS in this case.

Elfenbein Knew of the One Contest and the Municipal Contest Before June 28, 1950, When He Purchased

Lawrence Lenit (Tr. 69, 98, 83, 86), 100 N. LaSalle St., Chicago, Ill., lawyer for Elfenbein in the purchase, cousin of Elfenbein, claims to be agent for a number of buildings and owner of several; was agent for Elfenbein in the purchase.

He was, therefore, obligated to look into the status of the premises, 4414-16 Malden, before his client and cousin obligated himself to pay the purchase price ($32500 according to the Federal stamps on the deed).

Therefore, unless he was grossly derelict in his duty to his client, Lenit knew *before* June 28, 1950, the date of purchase, that the second apartment north (Jackson & Corbin) was not bringing in any rent on account of two forcible detainer suits that were consolidated (Tr. 67, 99 & 68), brought against them by the former owner, Hybl.

He must also have learned that the grounds for these suits were refusal to allow entry (a pretext to keep going after the judge said to wait on the decision of the OHE), and refusal to pay a certain rent increase, that had been granted previously by the OHE on a Hybl hardship petition (Tr. 68, 67, 99).

He must also have learned that the aforementioned rent increase was being contested in Washington in OHE appeal 8586.

He must also have learned what reduction in rent would ensue if Jackson and Corbin won.

Outside of the sure means that a lawyer has of determining these matters, there were simple obvious ways that actually pressed upon the attention, ways that are apparent from the following facts:

None of the tenants made any secret of these contests.

The janitor knew about them.

They were common gossip in the neighborhood, for both contests had been going on for several months before the date of purchase (Tr. 67, 99, 69).

For a prospective purchaser not to know about them was a practical impossibility.

Common sense says that he certainly knew about both contests before the date of purchase.

Moreover, after purchase, how could he have been so blind to his own interests as not to have learned the true meaning of both these contests, since each contest continued for a long period after purchase; the OHE contest *continued one month and 26 days* thereafter, and the court contest *continued 3 months and 21 days* thereafter, and involving,—surely a pressing matter—non-payment of rent (Tr. 68, 67, 99).

The ORS Order of Aug. 24, 1950 Reducing Rents (Appeal 8586) Proof That Elfenbein Knew of It and That the ORS Was Partisan.

The OHE order of Aug. 24, 1950, reducing rents (appeal 8586) existed. If it existed it was mailed. If it was mailed, it was mailed to each and every tenant affected, as well as to the landlord. For it is the invariable custom for the OHE to mail such orders to each and every one affected thereby. It is not mailed only to the landlord and the landlord trusted to notify the tenants. Therefore when each and every tenant swears that he duly received his copy of said order, it is reasonable to regard the fact that he did receive said copy, as established (Tr. 82, middle of page. Incidentally, the attention of the Court is called to the fact that Turner, lawyer for Elfenbein, asserted verbally before them, that the tenants received no such orders. This was on March 23, 1953, at 1212 Lake Shore Drive, Chicago). The tenants can produce said orders, if necessary.

The rentals set by the Hybl (former landlord) hardship petition grant were in dollars:

60.00	75.00,	69.50,	69.50, and 75.00 for, respectively:
Dargel,	Giannakis,	Koch,	Clock, and Jackson-Corbin.
57.50,	71.88,	63.25,	69.00 and 62.50

were the corresponding amounts both before the hardship grant and after the OHE order of Aug. 24, 1950, reducing rents, which cancelled that grant. The lower line of figures were, therefore, the ceiling rentals, beginning September 1, 1950. The upper line of figures were the basic ceiling rentals collected by Hybl, at the time that Elfenbein purchased the building.

The above figures are a matter of record and beyond question.

Elfenbein admits that he knew the first line of figures above (Tr. 10, 1(a), first sentence; and elsewhere).

Consequently the $69.00 paid September 1, 1950, by Clock (Tr. 74, lower check), showed a basic 50 cent reduction in ceiling rent which Elfenbein could not have failed to notice. The $7.00 increased occupancy charge against Clock was a deal between Hybl and Clock. It was, I believe, extra legal, as the increased occupancy was Clock's daughter and her child, and not a paying subtenant.

Elfenbein was also put on notice what the 2nd line of figures above was; by the copy of the Hybl hardship petition that Corbin loaned him (Tr. 86, 3rd paragraph up), and that 2nd line of figures were, as stated, the ceiling rents beginning September 1, 1950.

Moreover, as before stated, Lenit must have in the beginning have ascertained for Elfenbein what the ceiling rents would become, if Corbin and Jackson won.

Therefore, for all these reasons, Elfenbein certainly knew that the $69 that he collected from Clock was a 50 cent reduction from the basic ceiling rental that was collected by Hybl. Very probably he thought the amount so small that it was not worth making a fuss about, as he did in the case of the others. However the Clocks and Elfenbein were friendly in the beginning as the son, James Clock, was a salesman who called on him: was looking for a better location for his store.

The following sentence taken from the ORS brief of March 20, 1953, page 21, 11th line down, convicts the government of being a partisan for the landlord and goes far toward convicting the landlord of falsehood at the same time:

"It is clear that certain increases in the maximum rents were first granted and then revoked, and that direct notice thereof was mailed to the former landlord."

The purpose of this sentence was to bolster up the landlord's claim, the claim of Elfenbein, that is, that he know

not of this notice. I am restating this sentence as it would have been stated by one seeking truth and impartial justice:

"It is clear that certain increases in the maximum rents were first granted and then revoked, and that direct notice thereof was mailed to the former landlord, and that direct notices were also mailed at the same time to the tenants affected thereby, each and every one of them, as is our invariable custom".

Hybl had, perhaps, a motive for suppressing the notice, but the tenants had an excellent reason for telling about it. That the tenants would tell Elfenbein about it, and as a matter of course did, is a foregone conclusion (Tr. 82, middle of page).

Preliminary to further proof that Elfenbein knew that he was collecting overceiling rents from the very beginning, is this relevant statement:

Right after the arrival of the OHE order of Aug. 24, 1950 (appeal 8586), reducing rents, Elfenbein told Corbin (Tr. 84) that if anyone did not treat him fairly, he would evict him as soon as he could. He said, with emphasis, that he did not consider the $62.50 that Jackson and Corbin were paying fair, in spite of the fact that the OHE order of Aug. 24 reducing rents, established it as the ceiling rent. He further made it plain that he did not consider the order reducing rents fair to him in any respect. Of course this news spread to everybody as well as was delivered by Elfenbein first hand, wherever he thought it necessary. This preliminary statement is, of course, assertion, but it is upheld by succeeding facts and events.

Consider page 70 of the transcript. No one questions the facts there displayed.

Jennie Dargel gave Elfenbein a check on Sept. 1, 1950,

marked rent for September, 1950, and made out for $57.50. Elfenbein gave her a receipt for $57.50 marked, on account. Next month she paid Elfenbein $62.50, $60 of it as rent for October, and $2.50 to increase the September rent to $60. As already stated, these are all facts, unquestioned by anybody. Moreover $57.50 was correct; $60 an overcharge. Everybody admits this also. Now comes the disagreement.

Mrs. Dargel said she paid the overcharge because she was threatened. Elfenbein said she paid it because her lawyer told her to and denied threatening her. Now, consider the facts: she offered him the correct amount, and he, at least, questioned that it was correct. Otherwise she would have had no motive for going to a lawyer (lawyers cost money). But Elfenbein,—his story,—had made no threat, just a polite doubt that $57.50 was correct. Her lawyer had looked the matter up with the OHE and had found (necessary consequence of the Elfenbein story) that the correct rent was $60. But the correct amount was not $60. It was $57.50. Therefore the issue between Mrs. Dargel and Elfenbein was not whether or not $57.50 was the correct amount, but was she, or was she not, going to pay the $60 that Elfenbein demanded. A copy of the OHE order of Aug. 24, 1950 (appeal No. 8586) reducing rents, was mailed to Mrs. Dargel (and to all others affected, as is the invariable custom of the OHE). Mrs. Dargel states under oath that she showed this order to Elfenbein in explanation of the $57.50 that she offered him, that she let him have it to show to his lawyer and that she was unable to get it back. Certainly if she tried to pay $57.50 on September 1, 1950, instead of the $60 that she had been paying previously to Hybl, and if Elfenbein questioned it, she would have done just what she said she did, shown him the order in explanation.

Herein, by simple logical deductions from established

facts and practical certainties, we have proved to the satisfaction of any disinterested jury, that the falsehoods were Elfenbein's and not Dargel's.

Instead of using established facts and practical certainties (facts as evident and as available to the ORS as to the writer) in judging the Dargel letters, the ORS draws from phrases taken out of context, a conclusion which is, in substance as follows: that if Elfenbein said what the Dargels say he said, it would have given the Dargels no motive for paying overceiling rent, or for not complaining to the OHE, or for humoring him in any manner. This is the remark under criticism here:

"Even while paying this additional rent, Mr. Elfenbein several times told us that he was going to cut the building into small apartments."

The Dargels are women, not lawyers skilled in accurate statement, but they have plenty of common sense. If they had thought that paying overcharges was useless, they certainly would not have done it. The talk of cutting up was threat, not a promise, to keep the Dargels in line as they had put up a fight. Moreover, he was still angry after they had submitted to overcharge, because they had insisted on writing on the face of their checks, what they were for (Tr. 88, last sentence).

This, continues the ORS (page 19, ORS brief), was preceded by the general statement that Jennie E. Dargel "knew that attempts to pay the ceiling rents were met by threats of eviction," and followed by the statement that the landlord "had said" to unidentified persons "that if anyone complained to the Office of the Housing Expediter, he would cut up their apartment and evict them".

We wish to repeat here that the Dargels are not lawyers, that in court, as in patent law, every one has a right to use

his own language. I may add the threat to do a thing if——, and the promise to do that thing, are frequently used interchangeably by people not skilled in expression. What is meant is all that counts, and certainly the Dargels would not have paid the overcharge that had been contested so long, if they believed that there was no advantage in so doing. The sentence omitted in Tr. 28, that is present in Tr. 7 certainly involves no contradiction or misunderstanding to anyone who considers the context in the light of events. It is simply a case of 'promising to do' used in place of 'threatening to do if——'. Mrs. Dargel may have omitted it in Tr. 28, because some one criticized it on that ground.

By reading into the unskilled phraseology of the Dargels which common sense would tell anyone that they did not intend, the ORS concludes that they were not telling the truth.

Compare this tea leaf method of investigation, with the reasoning from established facts and practical certainties, beginning on page 6 of this discussion, that upholds the Dargels and convicts Elfenbein of falsehood.

The ORS continues that the Clock letter (Tr. 5) and affidavit (Tr. 31) are not identical. Why should they be? Certainly they do not contradict one another. ORS makes same comment on Jackson letters (Tr. 6 & 30). Also, same reply to said comment. The ORS criticism on the Giannakis letters (Tr. 8 & 27) is that she denies threat to complain. Does that make Mrs. Giannakis untruthful? The ORS continues that the letters and affidavits, Tr. 5-9, 28-31, lean on one another for support. The letters and affidavits say very definite things, each one of them does, and needs no aid from the others to elucidate its meaning. The ORS continues that the terminology of these letters is so similar as to suggest the absence of spontaneity: for example the

phrase "cut up and evict" or some form thereof, appears with surprising uniformity (Tr. 6, 7, 8, 9, 26, 27, 29, 30, 31, 62). The words lean and spontaneity are such vague and tenuous charges that I am surprised that a disciple of accurate speech would use them. As to the phrase "cut up and evict", it is common parlance around here, altho it may jar somewhat on the ear of a stylist. Common sense would say that tenants, associated together in a common cause, would be likely to use similar terminology, to say the same things.

There is nothing in the phraseology discussed that would establish one discreditable thing against the tenants.

This conviction by surmise and innuendo is manifestly to sustain the landlord, right or wrong. It ignores the action, realities and established facts, for said facts sustain, in essence, every charge that the tenants make and convict the landlord of falsehood.

The only facts that the ORS quotes and does not deprecate, are the plans, permit, etc., that indicate that the landlord really meant to convert. Note in the following how facts that favor the tenants are treated:

He collected overceiling rent and gave receipts proving it. True, says the ORS, the receipts prove he did it innocently.

Direct notice was sent to the landlord reducing rents. True, says the ORS, but they went to the old landlord, Hybl, who suppressed them. (Not a word about what the ORS knew to be its invariable custom, namely: that direct notices also were mailed to all affected thereby, to each and every tenant.)

Gwendolyn Dargel swore (Tr. 71) that she gave landlord Elfenbein her copy of the above notice. True, says the ORS, that is what she swore, but what did Gwen's mother say at an earlier date: "even while paying this additional rent,

Mr. Elfenbein told us several times that he was going to cut the building into additional apartments," and, therefore, continues the ORS, after your mother said such a thing as that, who are you to contradict a landlord? He denies that you gave him a copy, or put him on notice in any way.

The tenants all swore (Tr. 82) that thy received these notices reducing rents, and that they all put the landlord on notice thereabout. No comment, replies the ORS.

But, say the tenants, it is your invariable custom to mail such notice to all concerned, and we all received them. No comment, replies the ORS.

And, add the tenants, Corbin spent over a year winning these orders reducing rents (Tr. 87) and we all helped. Having fought for victory, why wouldn't we want the fruits of victory, and how else could we get them without notifying the landlord? No comment, replies the ORS.

And Corbin and Jackson were in the Chicago Municipal Courts for seven months, the tenants persist, defending against forcible detainer actions, brought by the former owner, Hybl, (11 court hearings, Tr. 67, 99, 68, 98). The proceedings overlapped the date of purchase by 3 months and 21 days. The reason for these actions were the refusal of Jackson and Corbin to pay a certain increased rental, wherein they were sustained by the OHE on August 24, 1950, and by the municipal court on October 19, 1950, and the refusal to allow entry. (The same judge held for the defendants in both actions at this same time, October 19, 1950. That the two actions were consolidated is shown by the two half sheets, Tr. 67, 99. See also Tr. 68).

Lawrence Lenit, attorney for Elfenbein in the purchase, continue the tenants, was present as observer for landlord Elfenbein, was attentive to what was going on, stood at the bar with the rest. (Tr. 69) What Lenit learned, Elfenbein learned.

That's what *you* say, replies the ORS.

Robert A. Kahn, our attorney of record, says the same thing, answer the tenants. (Tr. 69)

It doesn't overcome the denial of landlord Elfenbein, says the ORS.

But, answer the tenants, Mrs. Elizabeth Quinlisk, the original owner, a landlord, mind you, and still a landlord, a landlord all her life, in fact: she says the same thing (Tr. 98) and adds that she talked to Lenit at some length.

The denial of landlord Elfenbein still stands, answers the ORS. (Even the ORS reverence for a landlord won't overcome its allegiance to landlord Elfenbein.)

But, say the tenants, landlord states (Tr. 40) that Corbin told him that the judge told Corbin to pay $75 per month. Now the ORS and everybody else admits that $62.50 is the correct amount. Doesn't this contradict the landlord?

No comment, answers the ORS.

On page 10 of the landlord reply brief filed March 21, 1953, landlord states that this court action had nothing to do with ceiling rents, but involved only the right of entry. This statement, says Corbin, is obviously untrue, for two issues were settled on October 19, 1950, as is proved by the two half sheets, Tr. 67 & 99, certified by Chicago Municipal Court Clerk, Joseph Gill, Tr. 68 & 100. These half sheets show that they both held for the defendants, on the same date, October 19, 1950, before the same judge (Donoghue). The '268 one fixed the Jackson and Corbin rent at $62.50 from August, 1950, on. The '999 one was on the right to refuse entry. Kahn, the Jackson and Corbin attorney of record, swears to this (Tr. 68). He is a practicing attorney in Chicago. If he were lying, the Chicago Court Record would convict him with certainty. Would Kahn risk his license and his livelihood in such a lie?

No comment, answers the ORS.

At the top of page 21 of the ORS brief is the following statement of the ORS, a statement of fact:

"Despite all of the difficulties alleged and all of the threats, no complaint was made to the Area Rent Office."

The ORS comments on this fact as follows:

"It is unusual . . . where the tenants apparently knew of the threats to, and problems of, each of the other tenants."

Common sense would say that where tenants had been associated together in a common contest ((Tr. 87), 4th line up), and interchanged information, they would be more likely to follow a common policy, than if the contrary were true.

At the bottom of Page 16 of the ORS brief, the ORS states, in substance, that repeating assertions does not make them more believable. Of course, for the same person to swear to the same thing five different times does not make the thing sworn to more believable, but for five different respectable families to swear to that same thing, certainly does.

Long time tenants—in this matter of complaint discussed above—could reasonably be expected to try to keep their complaints all in the family, so to speak, to avoid the onus of posting the landlord as delinquent with the ORS, for who would protect them when the ORS is gone? The tenants were more interested in the continuance of their tenancy than in the satisfaction of their grievances. The landlord, aware of this fact, increased his encroachments with time. Beginning with rent overcharges, he, a few months later, tore down the back fence and wrecked the yard with his

car. He refused decorating and necessary repairs, culminating in tricking the Giannakis in a $400 expenditure which was mainly his obligation.

Further evidence that Elfenbein knew what the Jackson and Corbin ceiling rent was after August 24, 1950, as well as before, is given by the receipts shown in Tr. 59 and 60, by Tr. 85, top of page and also 2nd paragraph down.

Several arguments have been given, arguments that rest upon grounds that are independent of what either landlord or tenant may say, and arguments that need no help from one another, to establish that Elfenbein had guilty knowledge that he was collecting overceiling rents, from the moment that he commenced to do so.

The argument of the ORS that the fact that the landlord gave receipts for his overcharges is evidence of his innocence, is, in our opinion, purely partisan.

He wanted these overcharges very badly. They added nearly $2000 to his borrowing power on the building. He could not get them without giving receipts. Moreover giving receipts would help maintain his pose that the overcharges were legitimate. Remember he had records from the time of purchase that the overcharges were legitimate then. That he still maintains this pose in the face of certain proof to the contrary, shows that he had cogent reasons.

His offer to give back the overcharges as soon as (his story) he learned about them, is also advanced by the ORS as indicating his innocence, ignoring the time and circumstances of the offer.

Only after 19 months of collecting overcharges, when, defending eviction, the tenants notified the ORS thereof, did he make the offer. He was in the position of the thief caught with the goods, with this amusing difference, that the thief caught would not quibble about giving the loot back, whereas the landlord argued that he should be allowed

to keep it, part of it anyway, however, he added, he was willing to do as the ORS said, as if he had a choice.

Proof of underservices. Admit, $390.00 deficit. Knowledge thereof not denied. Sophistry of attorney thereabout. (Tr. 17) As to decorating, Elfenbein admits in his affidavit, beginning on Page 43 of the transcript, what adds up to a $390.00 deficit in legal allowance for decorating.

Elfenbein did no decorating whatever himself. What little he gave was allowance for work done by the tenants. The legal allowance is 2/3 of one month's rent per year.

The decorating to which the tenants were entitled and the allowances which Elfenbein claimed he gave, are itemized as follows:

1. The Dargels had a right to ..... $ 80.00
   Elfenbein (Tr. 44) claims to have given $24.
   Mrs. Dargel said the $24 was for plastering, not decorating.
   Deficit admitted by Elfenbein $56.00
2. The Giannakis had a right to $100.00
   Elfenbein (Tr. 44) claims to have given $50.
   Mrs. Giannakis says she took it away from him. (Tr. 91, 97)
   Deficit admitted by Elfenbein $50.00
3. Koch had a right to ..... $ 92.00
   Elfenbein (Tr. 45) says Koch didn't ask: volunteered.
   Deficit admitted by Elfenbein $92.00
4. The Clocks had a right to ..... $ 92.00
   Elfenbein (Tr. 46) says they asked too much: then volunteered.
   Deficit admitted by Elfenbein ..... $ 92.00
5. Jackson and Corbin had a right to $100.00
   Elfenbein says (Tr. 46) never had access.
   Deficit admitted by Elfenbein $100.00
   Total deficit admitted by Elfenbein $390.00

On Tr. (46) Elfenbein admits, under oath, that he gave Clocks no decorating. On Tr. (17) his attorney, Turner, makes the vague statement that landlord was required to do $200.00 in decorating because of leaky roof. Of course he did not say he did it, so he escapes perjury, but the intent is plain. Other expressions, such as substantial conformity to law, occur frequently.

Elfenbein makes no claim in his affidavit (Tr. 43) that he did not know his obligations as to decorating.

Summary of Reasons for Granting Writ

Criteria that have been used, or usable, for granting or denying certificates:

1. According to Morris A. Lieberman of Region 6.
2. Certificates not intended as tools for blackmail.
3. Public interest, the main standard of the Cook County Rent Advisory Board.
4. Proof that the good faith doctrine of the EmCA is inequitable, whereas above works with fairness.
5. ORS criteria held secret.

Proof of underservices. Admits $390.00 deficit. Knowledge thereof not denied. Sophistry of attorney thereabout (Tr. 17).

Proof of overcharges. Landlord admits collecting them for 19 months (Tr. 17), pgh 11, until after he received written notices. Notices mailed in March (Tr. 5, 6, 7, 8, 9).

Proof of amount of overcharges (Tr. 5, 6, 7, 8, 9) and legal rentals before and after the OHE order of August 24, 1950, reducing rents:

	Before	After	Proof
Corbin and Jackson	75.00	62.50	Tr 59, 60, 69
Dennis Giannakis	75.00	71.88	Tr 14, pgh 2
Wm. Irving Clock ($7.00 increased occupancy charge, daughter and child plus ceiling $69.50)	76.50	69.00	Tr 74
Jennie E. Dargel	60.50	57.50	Tr 7, 43
Arthur J. Koch	69.50	63.25	Tr 9, 15

Omitting Clock, the difference between these above and after amounts multiplied by 19, is the total overcharge, or $477.47 total.

The landlord knew from beginning that he was collecting overceiling rents.

The ORS has been partisan.

Landler Elfenbein has used the privilege to convert as a threat to revoke an OHE order reducing rents, to avoid the obligations of decorating and repair, to infringe on other rights and to prevent complaints to the OHE.

Under Section 206(h) of the Housing and Rent Act of 1947, as applied in the Chicago Area, and elsewhere for years (see page 9 herein) this is more than sufficient to bar conversion.

The admitted overcharges in rent are $438 (page 9 herein).

The admitted decorating deficit is $390 (page 24 herein).

The admitted overcharge in rent and underservices are $824 (The tenants say over $1500).

The $295 check to plasterers (Tr. 72) was for rehabilitating that was Elfenbein's obligation. Elfenbein disputes the amount.

Let us consider the admissions only; this much of the tenants case has been proved

> He collected overcharges that revoked the OHE order of August 24, 1950, reducing rents, for 19 months and admits it.
>
> He admits that underservices amounted to $390 and makes no claim that he did not know of his obligation in the matter. Although he denies it, it has been abundantly proved that he collected the overcharges in rent, knowingly and willfully.

Corbin spent over a year winning the reductions in rent which the landlord collected as overcharges. All the tenants

helped (Tr. 87, 4th line up). Why then did they give up their victory? Did the landlord offer them something in return? The fact that he denied that he knew that the overcharges were overcharges proves that he did not. As time went on, he tore up the back yard with the wheels of his car, which he parked there. Later, he strewed ashes. His encroachments increased with time. He ended trying to evict everybody.

Now, here is $828 that landlord admits that he got unlawfully from the tenants. (The tenants say over $1500.) He makes no claim that he gave them anything in return. He makes no claim that he did not know that he was underservicing in his affidavit (Tr. 43). His encroachments increased with time. Note the Giannakis $295 check (Tr. 72) near the commencement to evict date. And yet no one complained to the ORS.

How did he accomplish this?

The tenants all swear that it was by the threat to cut up and evict, if they did not treat him fairly.

Suppose that what the tenants say be ignored, what power did the landlord have at his disposal to accomplish all this except this threat.

The ancient wisdom: judge a man by his deeds never had a better place for application.

Overcharges, underservices, increasing encroachments, all ending in attempts at eviction, all facts that the landlord admits: look at them for a moment, ignoring what either side says.

Then consider these three things:

1. The only power that a landlord has that could dominate a whole building and prevent complaint, is the threat to convert.

2. The landlord has been convicted of falsehoods.

3. The tenants have not been convicted of one single one.

The threat to convert was made by the landlord to accomplish his unlawful gains. This is sworn to by all the tenants and also that it was used to prevent complaint to the ORS.

(1) alone, above, should establish this, even without the help of (2) and (3).

This, we submit, finishes proving the case, for the tenants.

ROBERT A. KAHN,
135 S. LaSalle St.,
Chicago 3, Illinois,
Atty. for Petitioners.

REX K. NELSON,
416 5th St., N. W.,
Washington, D. C.,
Of Counsel.

APPENDIX A

CONFIDENTIAL RENT MEMORANDA 6

RENT MEMORANDUM 6—I.

REQUIREMENT OF GOOD FAITH IN EVICTIONS

A number of provisions of Section 6 (a) of the Housing and the Hotel Regulations specifically impose a requirement of good faith on the part of the landlord. Even where that requirement is not specifically mentioned, it is nevertheless implicit. The provisions of Section 4 (b) of the Emergency Price Control Act of 1942 are relevant to the problem of good faith. That section reads as follows:

"It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, *or proposes to take,* action authorized or required by this Act or any regulations, order, or requirement thereunder."

The ORS does not give out readily interpretations of the law on evictions. The word Confidential in the upper left hand corner indicated this. Said word is the reason for printing this.

APPENDIX B

EXTRACT FROM RESPONDENT BARR'S BRIEF, FILED MARCH 2, 1952, EMERGENCY COURT OF APPEALS

II. The factual determinations that the landlord had substantiated the grounds for the eviction and that the eviction was sought in good faith are supported by substantial evidence on the record considered as a whole

After the evidential record in the administrative proceedings was closed, independent findings were made by this Respondent that the ground for the Certificates Relating to Eviction had been substantiated and that the certificates were sought in good faith (Tr. 102). Upon these findings

the protest was denied. There being no apparent issue of law drawn between the Complainants and this Respondent, the sole issue presented to the Court by their pleadings and briefs is whether or not the determinations of fact made upon denial of the protest are "supported by substantial evidence on the record viewed as a whole."[1] If those determinations find such support in the record viewed as a whole, they are conclusive upon this Court as provided by the statutory provisions referred to in the margin.

It is believed to be unnecessary to discuss at any length the scope of this standard for review. The meaning of an identical standard contained in the Taft-Hartley Act[2] has been the subject of discussion by the Supreme Court in *Universal Camera Corporation* v. *NLRB*, 340 U. S. 474 (1951), and *NLRB* v. *Pittsburgh S. S. Co.*, 340 U. S. 498 (1951). It may be stated, however, that while the 1952 amendment to the Defense Production Act of 1950 changed the language of the review standard, it is this Respondent's belief that this Court, in common with many courts throughout the land, had in its review of the factual determinations applied a rule which would satisfy the law as presently written. We may now proceed to an evaluation of the evidential record.

The nature of the factual record in this proceeding is such as not to lend itself to demonstration of an ultimate conclusion by logical deduction from established facts. Resort to inference and to culling of the evidence is compelled not only by the basic nature of an inquiry into "good faith" but also by the sharp conflict in the evidence requiring the application of judgments as to credibility. It is clear, however, that the resolution of conflicts in evidence and the evaluation of its weight is the function of this Respondent. See *Rabkin* v. *Bowles*, 143 F. 2d 600 (E. C. A. 1944). There are contained in this record numerous

[1] This is the standard for review established by Section 408(a) of the Defense Production Act of 1950, as amended by the Public Law 429, 82nd Congress.

[2] For a discussion of the rule as it appears in the Taft-Hartley Act, see "Judicial Review, 'Substantial Evidence on the Whole Record'", 54 Harvard Law Review 1233.

allegations to the effect that the landlord deprived the tenants of services to which they were entitled; that he demanded and accepted payments of rent in excess of the legal maximum rents; that he knew of his obligations with respect to the services and maximum rents; and that he threatened the tenants that he would "cut up an evict" them if they insisted upon their rights in these matters (Tr. *passim*). These allegations are repeated in numerous forms. However, mere repetition of factual allegations lends to them no greater weight or acceptability nor does it lessen the difficulties inherent in determining credibility. The landlord has denied that he deprived the tenants of services or that he knowingly overcharged (Tr. *passim*). He alleged that the overcharges were through inadvertence and error and that when he first learned that he had been guilty of overcharges, he offered to refund to the tenants any amount determined by the Area Rent Director to have been received in excess of the legal maximum rents (Tr. 11). The record is clear to the extent that the landlord did obtain plans for a conversion which, under the terms of the Regulation and in the absence of other facts, would entitle him to the relief he sought (Tr. 1, 10) (12); that he secured the necessary permit (Tr. 57); and that he obtained a commitment for financing (Tr. 30-40, 58). While the landlord claims that some work was done in connection with the proposed conversion (Tr. 12), the complainants denied that work "of any consequence" had been done or that materials were on (Tr. 81). However, the record does show a contract for the complete job (Tr. 52-56). Those are, in the main, the significant conflicts in the testimony. If the evidence offered by the complainants were given full credence, their complaint in this Court would have considerable merit for the reason that it would demonstrate a fatal primary motivation on the part of the landlord. On the other hand, if the landlord's evidence is fully believed there was no primary motive other than conversion and indeed not even a secondary motive. In that event the landlord would be entitled to the relief sought. Moreover, the more existence of ill-will which does not provide the purpose for seeking the eviction would not alter the result. It was, therefore,

incumbent upon this Respondent to determine which evidence was credible. Upon denial of the protest this Respondent resolved the question in favor of the landlord. If such resolution was reasonable, there can be no question but that the ultimate conclusion reached upon the protest is supported by substantial evidence on the record viewed as a whole and is, accordingly, conclusive upon this Court. This is true so long as it may be found under this standard of review that the primary motivation was conversion. The more existence of ill-will or failure to comply with the Regulation will not sustain the complaint unless it provided motivation for the petitions for certificates relating to eviction. We may now examine the record to determine the reasonableness of this Respondent's findings upon the basic issue of credibility.

Of great significance are the facts that the landlord did undertake all of the steps necessary to conversion. He employed an architect and had blue prints prepared (Tr. 10); he secured financing commitments (Tr. 58); he obtained a building permit (Tr. 57); and he employed a contractor to do the work (Tr. 52-56). It remained only for him to recover possession. He actually expended the sum of $390.00 (or $480.00) in fees to secure financing commitments (Tr. 58). Although the record reveals no difficulty with the contractor and this Court denied leave to adduce additional evidence (see, order of January 30, 1953) the Complainants still attempt to question the contract in their brief (Comp. Br. 14). However, it must be obvious that the landlord can hardly be held accountable for the vicissitudes in the affairs of his contractor. These real and costly efforts to bring the planned conversion to fruition are entitled to weight in determining whether the landlord has acted in good faith.

One of the most troublesome questions raised by the record was that involved in the clear evidence of overcharges. Did they, in fact, provide the primary motivation? The landlord denied knowledge of the facts which gave rise to those overcharges (Tr. 37, *et passim*) and the tenants attributed to him actual notice of maximum rents (Tr. 71). One of the most significant pieces of evidence to the latter

effect is the sworn statement of Gwendolyn Dargel, apparently the tenant's daughter, made on May 19, 1952 (Tr. 71). But what had the tenant, Dargel, said at an earlier date. By reference to Tr. 7 we find that "even while paying this additional rent, Mr. Elfenbein several times told us he was going to cut the building into small apartments." This was proceeded by a general statement that Jennie E. Dargel "knew that attempts to pay the ceiling rent were met by threats of eviction" and followed by a statement that the landlord "had said" to unidentified persons "that if anyone complained to the Office of Housing Expediter, he would cut up their apartment and evict them." The threat could hardly have had much efficacy after the landlord expressed his purpose even while overcharges were being paid. Most significantly, the affidavit of Jennie E. Dargel, sworn to on June 2, 1952 (Tr. 26), follows the letter at Tr. 7 verbatim until the sentence concerning the landlord's expression of his purpose but omits that sentence. Further into the affidavit, the letter's recital of payment of overceiling rent and endurance of lack of services is supplemented by a statement that such payment and endurance were compelled by threats of eviction. Quite apparently the force of such threats would have been spent by the announced purpose. Similarly, the sentence in the Clock letter (Tr. 5) to the effect that "much complaint" was not made "because complaints were met by threats of cutting up and eviction" is modified in his affidavit to relate such complaints to the Office of Housing Expediter (Tr. 3). It is difficult to so construe the letter (Tr 5). Like additions were made in the affidavit of Earle R. Jackson (Of. Tr. 6 and Tr. 30). It is a legitimate subject for comment that the letter of Mrs. D. Giannakis (Tr. 8) and her affidavit (Tr. 27) denied any threat on her part to complain to the rent control officials. The letters and affidavits lean on each other for support (Tr. 5-9, 28-31). It may also be noted that their terminology is so similar as to suggest the absence of spontaneity. For example, the phrase "cut up and evict" or some form thereof occurs with surprising uniformity (Tr. 6, 7, 8, 9, 26, 27, 29, 30, 31, 62). Despite all of the difficulties alleged and all of the threats, no complaint was made to the Area

Rent Office. While this in itself is not surprising it is unusual where the problem affects an entire building and where the tenants apparently know of the threats to, and problems of, each of the other tenants.

It has been attempted to bring home to the landlord knowledge of the overcharges by the various statements of the tenants and by the presence of his attorney during the trial of an action between the tenant Jackson and the former owner of the building (e.g., Tr. 68, 97). The landlord has emphatically denied such knowledge (e.g., Tr. 43, 48). It is clear that certain increases in the maximum rents were first granted and then revoked and that direct notice thereof went to the former landlord. The record fails to overcome the landlord's denial. Moreover, it is entirely possible that while some of the facts might have been known to the landlord, their significance was not clear to him. The record does not show any earlier experience on his part with such problems. Much reliance is placed by the Complainants upon certain receipts given by the landlord (Tr. 70-74). However, the question must be asked whether a landlord, who has had numerous disputes with the tenants concerning overcharges and who threatened them with eviction if they complained to the authorities, would give such receipts as are set forth in the record. That this landlord gave them cannot be questioned. That he was guilty of wilful overcharges and threats of unlawful action based thereon is open to serious doubt. These parties appeared before an employee of the local Area Rent Office who apparently made his recommendations after listening to them (Tr. 38). The landlord is in business as a pharmacist and must be presumed to be able to understand the nature and consequences of his actions. It taxes belief that he would knowingly have created such objective evidence of violation on his part. It may fairly be found that he did not clearly know the facts. This Respondent reasonably gave credence to the landlord's evidence.

There is much other evidence in the record. To examine in detail each statement, such as whether the tenants patronized the landlord's store (Tr. 39, 65) or shared their gifts of food with him (Tr. 48-49) can serve no useful purpose. It is

sufficient to state that there was ample basis for giving credence to his evidence and thus, there is more than substantial evidence on the record viewed as a whole to support the determination made. Accordingly, that conclusion should not be disturbed.

Conclusion

For the foregoing reasons, the complaint should be dismissed.

Respectfully submitted,

ROBERTA SAUER,
Acting General Counsel,

J. WALTER WHITE,
Assistant General Counsel,

CHARLES P. LIFF,
Chief, Appeals Section,

TOM DAVIS,
Attorney, Appeals Section,
Office of Rent Stabilization.

In the Supreme Court of the United States

October Term, 1953

Office - Supreme Court, U.S.
FILED
AUG 18 1953
HAROLD B. WILLEY, Clerk

No. 181

JENNIE E. DARGEL, et al.;
Petitioners

v.

WILLIAM G. BARR, Director of
Rent Stabilization, et al.,
Respondents

Grant

COPY BOUND CLOSE IN CENTER

MOTION TO SUBSTITUTE

Respondent respectfully advises the Court that by Executive Order 10475 (18 F.R. 4537), effective July 31, 1953, the Office of rent Stabilization was abolished and the powers, duties and functions conferred upon the President by the Housing and Rent Act of 1947, as amended, with exceptions not here pertinent, were ordered to be administered through the Director of the Office of Defense Mobilization; that by Office of Defense Mobilization Order No. 29 (18 F.R. 4597), effective August 3, 1953, the Defense Rental Areas Division within the Office of Defense Mobilization and the position of Director of such Division were established and responsibility for all of the functions under the Housing and Rent Act of 1947, as amended, delegated to the Director of the Office of Defense Mobilization by Executive Order 10475, was delegated to the Director of the Defense Rental Areas Division; and that on August 3, 1953, Glenwood J. Sherrard was duly appointed and is presently the acting Director of Defense Rental Areas Division, Office of Defense Mobilization. Accordingly, respondent moves that Glenwood J. Sherrard, Director, Defense Rental Areas Division, Office of Defense Mobilization, be substituted in the place and stead of William G. Barr, Acting Director of Rent Stabilization, as respondent in the above-entitled cause.

ROBERT L. STERN
ACTING SOLICITOR GENERAL
Counsel for respondent

August, 1953